

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1047 of 1994

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For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

KANU @ KANTI MOHAN RANA

Versus

STATE OF GUJARAT

Appearance:

MR PM VYAS for Petitioner

MR. S.R.DIVETIA, learned Addl.P.P. for Respondent No. 1

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 06/08/96

ORAL JUDGMENT ;

1. Heard learned counsel.

2. On 22-3-96 it was recorded that learned counsel had agreed for final hearing on the next date. Accordingly the Appeal is treated to have been admitted. The Record and Proceedings, as called for from the trial court, are available. I have gone through the impugned

judgment and perused the relevant records.

3. This Appeal is directed against the judgment and order dated 1-8-94 rendered by the Additional Sessions Judge, Ahmedabad City, Court No.13, in Sessions Case No.349 of 1993 whereby the appellant has been convicted for the offences punishable under Sections 366 and 376 of IPC and has been sentenced to 2 years RI for the offence under S.366 IPC and to pay a fine of Rs.500/- and in default to undergo further RI for a period of 6 months. He has also been convicted for the offence under S.376 IPC and has been sentenced to undergo RI for a period of 5 years and to pay a fine of Rs.500/- in default to undergo further RI for 6 months. Sentences have been ordered to run concurrently.

4. The incident had taken place on 9-6-93 when the appellant-accused is said to have enticed the prosecutrix Gitaben. The FIR was lodged on 12-6-93 and pursuant to it the appellant was arrested on 14-6-93.

5. According to the case of the prosecution, the appellant and the prosecutrix-a minor married girl were living in neighbourhood and they were known to each other prior to the incident. The appellant gave allurement to the prosecutrix for better and prosperous life while she was already married elsewhere about a year before the date of the incident. According to the prosecution case, the age of the prosecutrix was only 14 years at the time of the commission of the offence. The appellant accused is said to have taken away the prosecutrix from Ahmedabad to a remote village namely, Jaton Ka Guda in Rajasthan at his uncle's place and there the offence of rape is said to have been committed upon her. The prosecutrix as well as the appellant were subjected to medical examination. The prosecutrix Gitaben was examined by prosecution as P.W.2 at Exh.7 and she has stated that the appellant, who was staying in the nearby locality to her parents house, took her to the Railway Station by offering allurement and took her to the remote village of Jaton Ka Guda in Rajasthan and there at his uncle's place rape was committed upon her on three occasions overnight. She had also stated that the rape was committed upon her against her will and without her consent. She has denied the story of love affair between her and the appellant. The version of the prosecutrix has been supported by other oral evidence. The Doctor, who carried out the examination of appellant and Gitaben, was examined at Exh.10 and Dr.K.S.Desai had deposed that he had examined the victim on 14-6-93 and he found the hymen of the victim to be ruptured, but he has stated that it was an

old hymen tear. Gitaben was then shifted to Dr. Lilaben Trivedi's Unit for further examination and it is stated that if the rape is committed between 3 to 5 days prior to the date of examination, there could be such a tear in hymen. Dr. Desai has further deposed that on 14-6-93 he had also examined the accused. No smegma was found and on the glans wash epithelial cells were seen and the presence of epithelial cell was indicative of the performance of the intercourse within a few days from the date of the examination of the accused. The Certificates issued by him at Exh.11 and Ex.13 corroborate the prosecution story. Dr. J.R. Modi P.W. 7 was examined at Exh. 21 for the purpose of ascertaining the age and he has deposed that the age of the victim was about seventeen years and the Doctor has categorically deposed that in the present case, the age of the victim could not be more than seventeen and half years in any circumstances. Thus according to the prosecution witnesses including the prosecutrix herself her age was given out to be 14 years and even according to the medical evidence she is about 17 years of age. She is said to be an illiterate labourer. In such facts and circumstances, even if she is taken to be seventeen years of age as per the medical evidence or to say that her age ranges between 14 to 17 years, she was not capable of giving consent. Thus, there was sufficient oral evidence corroborating her version as also medical evidence which shows that the offences punishable under Sections 366 and 376 had been committed in the facts of this case and that the findings of conviction recorded by the trial court are found to be correct.

6. So far as the question of the sentence is concerned, the trial court has already noticed the special circumstances i.e. with regard to the young age of the appellant and that he is not a habitual offender and looking to the totality of the facts, sentence of 2 years RI for the offence punishable under S.366 and 5 years RI for the offence punishable under S.376 has been awarded and both the sentences have been ordered to run concurrently. In a proved offence under S.376 in normal course the minimum sentence is 7 years, but in the facts of this case, for recorded reasons, the trial court has awarded a lesser sentence of 5 years RI. I do not find any reason to reduce the sentence further or to accept the prayer for releasing him on the sentence undergone.

7. The appeal has no force and the same is hereby dismissed. R & P of the case may be returned to the trial court.

